

WATER RESOURCES PROGRAM POLICY/INTERPRETIVE  
STATEMENT ON WHEN TO PERFORM A MAXIMUM NET  
BENEFITS ANALYSIS

Resource Contact: Policy & Planning Section

Effective Date: 1/31/05

Revised: NEW

References: Chapters 90.22, 90.54, 90.82 RCW; RCW 90.03.005; RCW 90.03.345

Purpose: To specify the circumstances under which the Department of Ecology (Ecology) will, and will not, perform maximum benefits analyses in conjunction with watershed planning, instream flow setting, water right permitting, and other program activities.

Application: This policy applies to all Water Resources Program activities, such as rulemaking to establish reservations of water, other rulemaking, watershed planning, instream flow setting, water right permitting, and other program activities.

Definitions: “Maximum net benefits” is defined in statute as “total benefits less costs including opportunities lost.”<sup>1</sup> This concept treats water as a valuable asset and, within the context of Washington’s present water allocation system, is intended to ensure that Washington citizens, as a whole, get as much value as possible from “the waters of the state.”

Background: The Water Resources Act of 1971, Chapter 90.54 RCW, declares certain fundamentals for using and managing state waters, including a list of uses that the Legislature has deemed beneficial (e.g. domestic, commercial, industrial, fish and wildlife maintenance, etc.). In addition, RCW 90.54.020(2) provides that

[a]llocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

Other fundamentals, however, include the state’s duty to protect and enhance the rivers, streams, and lakes of the state,<sup>2</sup> and to ensure safe and adequate supplies of potable water to satisfy human domestic needs.<sup>3</sup> Generally, the state may not approve an allocation that would conflict with this mandate.<sup>4</sup> The state is not obligated to perform a maximum net benefits analysis in fulfilling this duty.

For rivers, streams and lakes, the specific requirements are as follows:

RCW 90.54.020(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:(a) Perennial rivers and streams of the state shall be retained with the base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their

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<sup>1</sup> RCW 90.54.020(2).

<sup>2</sup> RCW 90.54.020(3)(a)

<sup>3</sup> RCW 90.54.020(5)

<sup>4</sup> However, in “situations where it is clear that overriding considerations of the public interest will be served,” withdrawals of water that would conflict with these fundamentals may be authorized (RCW 90.54.020(3)(a)).

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natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state will be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served.

For potable water supplies, the requirements are:

RCW 90.54.020(5) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

1. Ecology will implement the maximum net benefits provision solely in the context of rule-making associated with allocations of water and decisions to approve watershed plans that include reservations that allocate water. This includes:
  - a. Development of rules pursuant to RCW 90.54.050(1) to create a “reservation” for a particular use or uses other than for the purpose of satisfying human domestic needs;<sup>5</sup> and
  - b. Development of rules that would quantify the remaining water available for appropriation within a basin, particularly if the rule would tentatively commit a large quantity of water or a major share of the water resources of the basin, to future new appropriations.
  - c. Ecology’s approval of a watershed plan developed under RCW 90.82 that contains a reservation for a particular use or uses other than for the purpose of satisfying human domestic needs.
2. Ecology will *not* perform a maximum net benefits analysis in the following situations:
  - a. When considering an application for a new water right under RCW 90.03.290 or RCW 90.44.060, or an application for change, transfer or amendment under RCW 90.03.380 or RCW 90.44.100,
  - b. When water is appropriated (or retained) to provide for minimum water flow or levels or minimum instream flows under Chapters 90.22, 90.82 or 90.54 RCW. These water flows or levels can be established for instream flows (RCW 90.22.010) or for “stockwatering requirements” for other than

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<sup>5</sup> RCW 90.03.345 states, in part: “The establishment of reservations for water for agriculture, hydroelectric energy, municipal, industrial, and other beneficial uses under RCW 90.54.050(1)...shall constitute appropriations...with priority dates as of the effective dates of their establishment.”

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feedlots.<sup>6</sup> (RCW 90.22.040); and

- c. When parties use water under the groundwater exemption identified in 90.44.050. These uses include:

... any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day...or for an industrial purpose in an amount not exceeding five thousand gallons a day ...

3. Ecology adopts this policy to explain how it will apply such an analysis in future rulemaking.

As Ecology gains experience in applying the analysis during rulemaking, it may determine that revisions to this policy are appropriate. In that case, it will make such revisions as it deems useful or necessary.

/s/ Joe Stohr  
Joe Stohr, Manager  
Water Resources Program

1/19/05  
Date

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<sup>6</sup> RCW 90.22.040 states, in part: "It shall be the policy of the state, and the department of Ecology...to retain sufficient minimum flows in streams, lakes or other public waters to satisfy stockwatering requirements for stock on riparian grazing lands which drink directly therefrom..." and: "The policy hereof shall not apply to stockwatering relating to feed lots and other activities which are not related to normal stockgrazing land uses."